IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2819 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ZABUBEN JIVABHAI RABARI

Versus

H.K. LIMBADIYA, ELECTION OFFICER, AND T.D.O.

Appearance:

1. Special Civil Application No. 2819 of 2002

MR CL SONI for Petitioner No. 1
MR HS MUNSHAW for Respondent No. 1-2
UNSERVED-REFUSED (N) for Respondent No. 3
MR ASHOK L CHANDAK for Respondent No. 4
MR DK ACHARYA for Respondent No. 4

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE H.K.RATHOD

Date of decision: 02/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE N.G.NANDI)

In this petition under Article 226 of the Constitution of India, the petitioner has prayed for quashing and setting aside the order dated 14/16th February, 2002 passed by the District Development Officer, Banaskantha at Palanpur in Appeal No. 4 of 2002 preferred by the present respondent NO.4 under sub section (8) of section 51 of the Gujarat Panchayats Act, 1993 and with a further prayer to hold that the petitioner was the only nominated and elected candidate for the office of the Upa Sarpanch of Khentva Gram Panchayat by issuing suitable directions.

2. The facts leading to the filing of the present petition shortly stated are that the petitioner and respondent No.4 herein are the elected members in the election of Khentva Gram Panchayat held on 23rd December, 2001; that respondent No.3 was elected as Sarpanch of the said Gram Panchayat; that the election for the office of the Upa Sarpanch of Khentva Gram Panchayat was scheduled to be held on 25th January, 2002 at 11.00 a.m.; that the petitioner remained present and presented her nomination for contesting the election for the office of the Upa Sarpanch to the election officer at 10.50 a.m.; that respondent No.4 presented her nomination at 8.55 a.m. to contest the election for the office of the Upa Sarpanch. on the same day; that the petitioner was not informed about the time when the election of Upa Sarpanch was to be held; that at the election, the petitioner and the respondent No.4, both secured equal number of votes which required the fate of the petitioner and respondent No.4 to be decided by draw of lots; in the draw of lots, name of the petitioner was disclosed/found with the result the petitioner was declared elected as the Upa Sarpanch of the said Gram Panchayat; that after 3 to 4 days of the election declaring the petitioner to have been elected to the office of the Upa Sarpanch, respondent No.4 filed an appeal before the District Development Officer, Banaskantha at Palanpur under section 51(8) of the Gujarat Panchayats Act, 1993; [hereinafter referred to as the "Act"] that the District Development Officer, Banaskantha at Palanpur vide his order dated 14/16th February, 2002 Annexure-B, allowed the appeal of respondent No.4 and declared the nomination of the present petitioner as invalid and also declared respondent No.4 to have been elected to the office of the Upa Sarpanch as the consequence of nomination of the petitioner having been held invalid. It is this order

dated 14/16th February, 2002 declaring respondent No.4 to have been elected to the office of the Upa Sarpanch as a consequence of holding the nomination of the petitioner as invalid, which is under challenge in this petition under Article 226 of the Constitution of India.

It is not in dispute that the election to the office of the Upa Sarpanch of Khentva Gram Panchayat was scheduled to be held on 25th January, 2002. It is also not in dispute that respondent No.4 filed her nomination for contesting the election to the office of Upa Sarpanch at 8.55 a.m. whereas the petitioner filed her nomination for contesting the election for the office of Upa Sarpanch at 10.50 a.m. It is also not in dispute that the petitioner and respondent No.4 both secured equal number of votes and on draw of lots, respondent No.4 lost and the petitioner was declared elected as Upa Sarpanch of Khentva Gram Panchayat.

As pointed out above, nomination of the present petitioner is held invalid by the District Development Officer and as the consequence thereof, respondent No.4 is declared elected to the office of Upa Sarpanch of Khentva Gram Panchayat, Palanpur, District Banaskantha. The question, therefore, is after holding the nomination filed by the petitioner as invalid, whether the District Development Officer could have declared/held respondent No.4 elected.

3. It would be necessary to refer to certain provisions, reproduced below. Rule 5 of the Gujarat Village Panchayat (Upa Sarpanch) Election Rules, 1994 reads as under:

"5. Nomination of Candidates. (1) not less than two hours before the time fixed for the meeting for the election of a Upa Sarpanch, any member of the panchayat may nominate any other member for election as Upa Sarpanch and deliver to the Presiding Officer, a nomination paper in Form A appended to these rules, signed by himself as a proposer.

(2) A nomination paper so delivered shall be signed by the candidate as assenting to the nomination."

Rule 7 of the said Rules which deals with scrutiny of nominations is reproduced as under:

"7. Scrutiny of nominations.- At the meeting

convened under sub section (1) of section 51 of the Act, the Presiding Officer shall scrutinize the nomination papers delivered to him under rule 5 and shall, thereafter, readout the names of the members who in his opinion have been duly nominated together with the names of their proposers. "

Rule 8 of the said Rules which deals with the withdrawal of the candidature is reproduced as under:

"8. Withdrawal of candidature.- After the nomination papers are delivered to the Presiding Officer under rule 5,at any time before the time fixed for the meeting for the election of the Upa Sarpanch, a candidate may withdraw his candidature by a letter in writing subscribed by him and delivered to the Presiding Officer either by the candidate or by a person authorized by him in writing in that behalf. The candidate who has withdrawn his candidature shall not be allowed to cancel the withdrawal. Where the Presiding Officer has received such letters, he, while reading out at the said meeting the names of the members under rule 7, shall omit to read the names of the persons who have withdrawn their candidature. "

4. It will be seen from the above that Rule 5 reproduced above provides that not less than two hours before the time fixed for the meeting for the election of a Upa Sarpanch, any member of the panchayat may nominate any other member for election as Upa Sarpanch and deliver to the Presiding Officer, a nomination paper in Form A appended to these rules, signed by himself as a proposer. Rule 7 of the said rules provides that at the meeting convened under sub section (1) of section 51 of the Act, the Presiding Officer shall scrutinize the nomination papers delivered to him under rule 5 and shall, thereafter, readout the names of the members who in his opinion have been duly nominated together with the names of their proposers. Thus, it will be seen from the above that the nomination paper has to be submitted two hours before the time at which election is scheduled to be held.

5. Rule 7 reproduced above suggests that at the first meeting convened under sub section (1) of section 51 of the Act, the Presiding Officer shall scrutinize the nomination papers delivered to him under rule 5 and shall, thereafter, readout the names of the members who

in his opinion have been duly nominated. If the nomination paper is delivered to the Presiding Officer less than two hours before the time fixed for the meeting, he cannot ignore the prescription contained in rule 5 of the said rules and say that the candidate has been duly nominated. Whether the candidate can be said to be duly nominated would depend upon the compliance of rule 5. As seen above, rule 5 contemplates sublimation of nomination to the presiding officer not less than two hours before the time fixed for the meeting for the election of a Upa Sarpanch. In the instant case, admittedly, the petitioner filed her nomination at 10.50 a.m. i.e. less than two hours before the time fixed for the meeting for the election of a Upa Sarpanch and the nomination filed by the petitioner can be certainly said to be invalid and not in consonance with the requirement of provisions of rule 5. Therefore, as far as that part of the order passed by the District Development Officer is concerned, same cannot be called in question and fairly not done so by the petitioner.

6. It is submitted by Mr. C.L.Soni,learned advocate for the petitioner that holding the nomination filed by the petitioner to be invalid as not in compliance with the requirement of rule 5 would not, ipso facto, entitle respondent No.4 to be declared as uncontested to the office of the Upa Sarpanch and that the District Development Officer, Palanpur should have ordered re-election for the office of the Upa Sarpanch.

It may be seen that only the petitioner and respondent No.4 filed their nomination for election to the post of Upa Sarpanch, Khentva Gram Panchayat, Palanpur and as the District Development Officer in appeal found the nomination of the petitioner invalid in as much as the nomination filed by the petitioner for election to the said office was submitted at 10.50 a.m. i.e. within less than two hours before the time fixed for the meeting the only candidate then left is respondent No. 4 who had earlier lost on the draw of lots at the meeting dated 25th January, 2002.

7. In this regard, reliance has been placed on the decision in the case of Chehrabhai Kalubhai v. Govindbhai Hirabhai & Anr, reported in XII Gujarat Law Reporter page 757. In the case before the learned Single Judge, only two candidates had filed their nomination for the office of the Sarpanch and the nomination of Cheharbhai Kalubhai, the petitioner before the High Court was filed less than two hours before the time fixed for the meeting and, therefore, was found invalid as required

under rule 5. Remaining candidate was declared elected uncontested to the office of the Sarpanch. That the nomination to the election for the office of the Sarpanch, Endala village was to be filed before 1.00 p.m. on 15th April, 1997 but the nomination could not be filed before the Presiding Officer before 1.00 p.m. as the Presiding Officer was not available. Under the circumstances, appeal or application under section 44 (6) of the Gujarat Panchayats Act, 1961 was allowed and the election of Sarpanch was cancelled and set aside and re-election for the office of Sarpanch directed.

The learned Single Judge has observed that the stage contemplated by rule 9(1) of the Gujarat Gram and Nagar Panchayats (Sarpanch, Up-Sarpanch, Chairman and Vice Chairman) Election Rules, 1962, is a stage prior to the holding of the election, because it is for the Presiding Officer of the first meeting where the election of the Sarpanch is held to decide whether there is only one candidate validly nominated. If that stage is passed and the election as contemplated by the remaining sub rules of rule 9 is held, then, there is no question of only one candidate having been validly nominated for the office of Sarpanch. Rule 9(1) has no application once an election is held and if it is found at the stage of the decision on the dispute under sec. 44(6) of the Gujarat Panchayats Act that the nomination of one of the candidates was not valid, fresh election can certainly be directed to be gone through by the competent officer. Once the election has been set aside, directions must be given as a consequential order for holding fresh elections to the post of Sarpanch. It was within the power of the competent officer under section 44(6) while deciding the validity of the election of the Sarpanch to direct that fresh election should be held for the post of Sarpanch.

In the instant case, stage under rule 9(1) had gone and the votes were cast by the members of the gram panchayat for election to the post of Upa Sarpanch and the petitioner and respondent NO. 4 secured equal number of votes and thereafter draw of lots resorted to and the petitioner was declared elected. Now, when the nomination of the petitioner is found invalid in as much as the same was in breach of rule 5 having been filed less than two hours before the time fixed for holding the meeting, as far as the first part of the order passed by the District Development Officer, Palanpur, District Banaskantha is concerned, same cannot be held to be, in any manner, illegal which would call for interference in

the writ petition as the order is in consonance with the requirement of law. As far as the second part of the order namely declaring respondent NO.4 elected uncontested to the office of the Upa Sarpanch of Khentva Gram Panchayat as a consequence of the nomination of the petitioner having been held invalid, same cannot be sustained since there was no other candidate and, therefore, there was no question of declaring respondent No.4 elected uncontested as a consequence but what was required to be done by the District Development Officer, Palanpur, District Banaskantha was to direct holding of fresh election for the office of the Upa Sarpanch, Khentva Gram Panchayat, Palanpur, District Banaskantha. The decision in the case of Cheharbhai Kalubhai (supra) squarely covers the controversy / point at issue.

8. Mr. Acharya, learned advocate for respondent No.4 has referred to the decision in case of Ranchhodbhai Jethabhai v. Parshottam Galabhai and another reported in X Gujarat Law Reporter page 1 (D.B.). In the case before the Division Bench, the petitioner had challenged the validity of election of the first respondent as Sarpanch and sought direction that the petitioner be declared elected as Sarpanch. In another petition being petition no. 164 of 1968, election of the first respondent as Upa Sarpanch was prayed to be set aside and declaration that the petitioner be declared elected as Upa Sarpanch. The Division Bench declined the relief of declaration declaring the petitioners elected as Sarpanch and Upa Sarpanch respectively but only made rule absolute to the limited extent by issuing a writ of quo warranto quashing and setting aside the election of the first respondent in each petition and declared that the first respondent in each petition was not validly nominated as a candidate for election as Sarpanch or Upa Sarpanch, as the case may be.

In the case before the Division Bench, the question was not whether the fresh election should be directed to be held in the event of the nomination being declared invalid. The Division Bench judgment is confined to section 44, rule 6 and 8 of the Gujarat Gram and Nagar Panchayats (Sarpanch and Upa Sarpanch, Chairman and Vice - Chairman) Election Rules, 1962 and that the Division Bench held that the consequence of not complying with the particular requirement of rule 6 [delivery of nomination before two hours] is, therefore, clearly set out in Rule 8 and it is that the candidate is not to be regarded as duly nominated.

In our opinion, the decision in the case of

Ranchhodbhai v. Purshottam (supra) is not applicable to the facts of the present case except as regards the mandatory requirement of rule 6 which is not the point raised by present petitioner and also for the reason that the consequence of holding nomination of one out of the two candidates invalid i.e. direction of holding fresh election to the post of Sarpanch and Upa Sarpanch was not before the Division Bench.

In the result, we partly make rule absolute to the extent that we issue writ of certiorari and quash the order passed in Appeal NO. 4 of 2002 by the District Development Officer, Palanpur, District Banaskantha on 14/16th February, 2002 (page 19) to the extent declaring respondent NO.4 Smt. Maliben Lilabhai Rabari as Upa Sarpanch of village Khentva Gram Panchayat, District Banaskantha and further direct the respondents to hold fresh election for the office of the Upa Sarpanch, village Khentva Gram Panchayat, District Banaskantha under the Gujarat Village Panchayats (Upa-Sarpanch) Election Rules, 1994 within three months from today. Writ be sent at the earliest. There shall be no order as to costs.

Dt.2.7.2002. (N.G.Nandi,J.)

(H.K.Rathod,J.)

Vyas